

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169-5996
Facsimile (702) 949-8321
Telephone (702) 949-8320

Robert M. Charles, Jr. NV State Bar No. 006593
Email: rcharles@lrlaw.com
John Hinderaker AZ State Bar No. 018024
Email: jhinderaker@lrlaw.com
Marvin Ruth NV State Bar No. 10979
Email: mruth@lrlaw.com

Attorneys for USACM Liquidating Trust

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA Commercial Mortgage Company,

Debtor.

Case No. BK-S-06-10725-LBR
Chapter 11

**DECLARATION OF GEOFFREY L.
BERMAN IN SUPPORT OF USACM
TRUST'S MOTION TO ALLOW
PROOFS OF CLAIM BASED UPON
INVESTMENT IN THE AMESBURY
HATTERS POINT LOAN**

Hearing Date: September 30, 2011
Hearing Time: 9:30 a.m.
Estimated Time for Hearing: 10 minutes

I, Geoffrey L. Berman, declare under penalty of perjury:

1. I am an adult person competent to testify in court.
2. I make this declaration based upon my personal knowledge, and upon the records USA Commercial Mortgage Company.
3. I am the Trustee of the USACM Liquidating Trust ("USACM Trust"), which is an entity created by the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization ("Plan"), in the jointly-administered bankruptcy cases, In re USA Commercial Mortgage Company, BK-S-06-10725-LBR, pending in the United States Bankruptcy Court for the District of Nevada.

4. USACM circulated an Offer Sheet to prospective Direct Lenders soliciting funding for an acquisition and development loan to a borrower identified as “Amesburyport Corporation.” A copy of the Offer Sheet is attached hereto as **Exhibit B** and incorporated by this reference. The total loan amount proposed was \$21,750,000. *Id.* The Offer Sheet described the investment as a “First Trust Deed Investment” and noted that the investment would be secured by a “First Mortgage on buildings 1 through 9 at ‘Hatter’ Point’ in Amesbury, Massachusetts.” *Id.* The Offer Sheet stated that the loan proceeds would be used to “refinance the existing construction loan and provide construction funds to complete the balance of the project,” which was described as the restoration of 9 historic brick mill buildings for conversion in to condominiums. *Id.* The Offer Sheet stated that the loan-to-value was approximately 75% based on “revolver fundings of \$15 million to reach an appraised ‘aggregate retail sell-out’ of \$48,900,000” pursuant to a August 15, 2002 appraisal from Joseph J. Blake and Associates. *Id.*

5. On December 18, 2002, Borrower made and delivered to various lenders, including the Direct Lenders identified in **Exhibit A**, a “Promissory Note (Refinancing and Construction Loan)” (the “Note”) and a Loan Agreement. The Loan Agreement provided for a loan of up to \$21,750,000. *Id.* Pursuant to the Loan Agreement, the loan amount was intended for the “refinancing of certain existing debt of the Borrower, and for financing the construction of the Project.” *Id.* The Loan Agreement also provided for a \$5,000,000 “construction revolver” whereby the Borrower could borrow, repay, and then re-borrow \$5,000,000 of the loan.

6. The Note was secured by a “Construction Mortgage and Security Agreement” (the “Mortgage”) from Borrower in favor of the Direct Lenders, which was recorded in the official records of the Essex County South District Registry on December 18, 2002 at Instrument 2002121800924.

7. The Note was also supported by a Guaranty signed by William H. Sullivan on December 18, 2002.

8. The USACM “Loan Summary” dated July 31, 2006 and filed in this case shows that Borrower was “Non-Performing” on the Note as of July 31, 2006. During this bankruptcy case through the transfer of servicing to Compass, USACM treated the Direct Lenders with respect to any interim payments by the borrower in accordance with this Court’s orders and the confirmed Plan.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 11, 2011

/s/ Geoffrey L. Berman

Geoffrey L. Berman

Copy of the foregoing mailed (without Exhibits) by first class postage prepaid U.S. Mail on August 11, 2011 to All investors listed on Exhibit A Attached.

/s/ *Matt Burns*

Matt Burns, Paralegal
Lewis and Roca LLP